

Hewitt died in June, 1827, intestate, leaving these parties his children and heirs-at-law, that at the time of his death he was seised in fee simple of certain real estate, and possessed of some chattels real, which being in themselves incapable of division, it was prayed that they might be sold and the proceeds divided among these parties. But it was further stated, that the defendant Jacob Hewitt, had, by a commission from this Court, been found a lunatic; and that the other defendant, Rezin D. Hewitt, had been appointed his trustee, in whose custody he then was as a lunatic; upon which it was prayed, that by a special order, the defendant, Rezin D. Hewitt, might be authorized to answer for him. And to obtain the opinion of the Chancellor upon this latter prayer, the bill was at once submitted to him.

BLAND, C., 26th January, 1831.—Where a defendant has been found a lunatic by a regular commission, and is then in custody as such; and it is so stated, as in this instance, it is a matter of course for him to answer by his committee without any special order for that purpose; but here it appears, that the lunatic's committee is interested in the subject in controversy; and, therefore, it becomes necessary to appoint a disinterested, capable person as his guardian, to answer for him. 2 *Mad. Chan.* 332; *Lloyd v. —*, 2 *Dick.* 460; *Lyon v. Mercer*, 1 *Cond. Chan. Rep.* 182. Subpœnas may issue in this case, as of course, against both the defendants; but no further proceedings can be had, as against the lunatic, until he has a guardian appointed for him who will consent to act as such, and take charge of his interests. The Chancellor will expect to have some suitable person described and recommended to be guardian to the defendant Jacob Hewitt.

Whereupon it is ordered, that this case stand over as to the defendant Jacob Hewitt, until further order.

* The defendant Rezin D. Hewitt, by his answer, admitted, that the property in the bill mentioned was incapable of division; and therefore prayed, that it might be sold. And at the same time the solicitor of the parties recommended Doctor Haines Goldsborough, of Anne Arundel County, as a suitable person to be appointed as guardian of the lunatic defendant. **185**

BLAND, C., 12th February, 1831.—Ordered, that Doctor Haines Goldsborough, of Anne Arundel County, be, and he is hereby appointed guardian of the said defendant Jacob Hewitt, a lunatic, with full power and authority to answer the said bill of complaint in his behalf, and in all respects to defend and sustain his rights and interests so far as the same may be involved in this suit.

After which the lunatic defendant, by Goldsborough his guardian, answered, that he believed it would be to his advantage,